

VZCZCXYZ0000
OO RUEHWEB

DE RUEHBS #0088 0111506
ZNR UUUUU ZZH
O 111506Z JAN 07
FM AMEMBASSY BRUSSELS
TO RUEH/SECSTATE WASHDC IMMEDIATE 4022
INFO RULSDMK/DEPT OF TRANSPORTATION WASHDC
RUCPDOG/DEPT OF COMMERCE WASHDC
RHMFIUU/FAA NATIONAL HQ WASHINGTON DC

UNCLAS BRUSSELS 000088

SIPDIS

SIPDIS

FAA FOR MCAPPELLE, AIA-300
SDOC FOR 3133/USFCS/OIO/EUR
STATE FOR EB/TRA, EUR/ERA, AND EUR/UBI

E.O. 12958: N/A

TAGS: [EAIR](#) [EINV](#) [BE](#)

SUBJECT: BRUSSELS AIRPORT NOISE: COURT DECISION UPHOLDS
FINES, NEGOTIATIONS STILL THE PREFERRED SOLUTION

REF: A. 05 BRUSSELS 2735

[1](#)B. 06 BRUSSELS 1035

[1](#)1. (SBU) Summary. A decision by Belgium's Constitutional Court on December 21 upheld the Brussels Region's noise standards (and right to fine violators) against a challenge by the Federal Minister of Transportation. This appears to reverse an Appeals Court ruling of last March, which declared the capital region's demanding noise abatement criteria unconstitutional. The new decision supports an earlier Appeals Court order of June 2005 that the Federal government must revise the standing aviation use plan of Zaventem Airport or face fines of 25,000 euros per infraction. Despite the dueling rulings, all parties have agreed that no fines will be imposed while negotiations are underway between Flanders and Brussels regions and federal authorities. Given the May federal elections and pace of negotiations, 2008 is the soonest many expect to see a solution suggested for the noise dispute. End Summary.

[1](#)2. (U) On December 21, 2006, Belgium's Constitutional Court (highest court in Belgium; functions as a Supreme Court) rejected an appeal by the Federal Minister of Transportation, joined by the Brussels Airport Authority and Belgocontrol, that the Appeals Court ruling of June 2005 be overturned. That 2005 decision (Ref A) ordered the Federal government to alter the Brussels Airport use plan to comply with Brussels Region noise standards, even though the airport itself is located in the Flemish Region. These stringent noise abatement standards and fines attempt to deter flights over the city, which lies only 7 kilometers from the airport. The new Court decision calls for Belgian federal authorities to comply with the lower Appeals Court order to comply or pay 25,000 euros fine per incident of violation.

[1](#)3. (SBU) On March 21, 2006, a different Appeals Court had declared the high regional standards unconstitutional (Ref B), because the standards compelled Federal authorities to distribute the noise pollution burden unevenly if Federal authorities complied, as flights would have to be diverted over Flanders and Wallonia to avoid Brussels. This would have breached the principle of equity and "equal protection" under the law due the inhabitants of all three regions. By upholding the Constitutional lawfulness of the Brussels noise standards and fines, the high court has presumably reversed the Appeals Court decision.

[1](#)4. (SBU) Federal Transportation Minister Renaat Landuyt acknowledged the new decision verified regional authority to set noise standards, but declared that the ruling changed

nothing. Flanders-Brussels interregional negotiations on the issue, mediated by the Federal government, have been underway since 2005, during which the parties agreed not to attempt to collect fines. (Note: Since the deadline for Federal compliance with the Court Order passed in September 2005, reportedly over 820 violations of Brussels noise standards by air carriers have been recorded; imposed fines would have exceeded 20 million euros.)

¶5. (SBU) Comment: The new Court decision does not resolve the jurisdictional dispute. All sides endorse the negotiating process underway to reach an agreed mechanism to best distribute the noise burden of the urban airport. Interrelated jurisdictional competencies -- Federal government for aviation safety, Regional governments for environmental (read noise) issues, Belgocontrol for aviation navigation -- remain the heart of the issue, complicated by linguistic group frictions. The coming Federal elections in May/June 2007, to be followed by high-level negotiations about further devolution of responsibilities from the federal to regional level, will certainly complicate the situation. Consensus among analysts is that there will be little progress on resolving the airport noise issue at least until ¶2008. In the meanwhile the carriers will not be fined.

IMBRIE

.